

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

**Verizon North Inc., Verizon South
Inc. and Champaign CellTelCo,
d/b/a Cingular Wireless**

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02-0459

**Joint Petition Pursuant to 47 U.S.C.
§ 252(i) Regarding Adoption of an
Interconnection Agreement.**

ORDER

By the Commission:

Procedural History

In this proceeding, Verizon North Inc., Verizon South Inc. (collectively "Verizon") and Champaign CellTelCo, d/b/a Cingular Wireless ("CCTC"), filed a request for approval of an agreement ("Agreement") in which CCTC adopts the terms of an interconnection agreement between Verizon and Nextel West Corp.

Pursuant to due notice, this matter came on for hearing before a duly authorized administrative law judge of the Commission at its offices in Springfield, Illinois. The respective attorneys entered appearances for Verizon and the Commission Staff ("Staff"). An appearance was also entered by a representative of CCTC.

Verizon filed the verified statement of James R. Hargrave, Assistant Vice President-Public Policy and External Affairs. Staff filed the verified statement of Olusanjo Omoniyi of the Commission's Telecommunications Division. In his statement, Mr. Omoniyi recommended approval of the Agreement for the reasons, and subject to the conditions, described below.

Section 252 of the Telecommunications Act

Section 252(a)(1) of the Act allows parties to enter into negotiated agreements regarding requests for interconnection, services or network elements pursuant to Section 251. Verizon and CCTC have negotiated such an Agreement, and have submitted it for approval in this proceeding.

Section 252(a) of the Act provides, in part, that "[a]ny interconnection agreement adopted by negotiation . . . shall be submitted for approval to the State commission." Section 252(e)(1) provides that a State commission to which such an agreement is submitted "shall approve or reject the agreement, with written findings as to any deficiencies." Section 252(e)(2) provides that the State commission may only reject the

negotiated agreement if it finds that “the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement” or that “the implementation of such agreement (or portion thereof) is not consistent with the public interest, convenience, and necessity.”

Section 252(e)(4) provides that the agreement shall be deemed approved if the State commission fails to act within 90 days after submission by the parties. This provision further states that “[n]o State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section.” Section 252(e)(5) provides for preemption by the Federal Communications Commission if a State commission fails to carry out its responsibility and Section 252(e)(6) provides that any party aggrieved by a State commission’s determination on a negotiated agreement may bring an action in an appropriate Federal district court.

Section 252(h) requires a State commission to make a copy of each agreement approved under subsection (e) “available for public inspection and copying within 10 days after the agreement or statement is approved.”

Section 252(i) requires a local exchange carrier to “make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.”

Purpose and Terms of the Agreement

CCTC represents that it is a Federal Communications Commission-licensed provider of two-way wireless service in the State of Illinois. In the proposed Agreement, CCTC adopts the terms of an interconnection agreement between Verizon and Nextel West Corp. Among other things, the proposed Agreement establishes the financial and operational terms for the physical interconnection of Verizon’s and CCTC’s networks.

Position of Staff

Staff reviewed the Agreement in light of the criteria contained in Section 252(e)(2)(A) of the Act. Staff says that under this section, the Commission may only reject an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

With regard to the discrimination issue, Staff’s position continues to be that in order to determine if a negotiated agreement is discriminatory, the Commission should determine if all similarly situated carriers are allowed to purchase the service under the same terms and conditions as provided in the Agreement. Staff believes a carrier should be deemed to be a similarly situated carrier for purposes of this Agreement if

telecommunications traffic is exchanged between it and Verizon for termination on each other's networks and if it imposes costs on Verizon that are no higher than costs imposed by CCTC. If a similarly situated carrier is allowed to purchase the same service(s) under the same terms and conditions as provided in this contract, then Staff says this contract should not be considered discriminatory. According to Staff, since Section 252 (i) of the Act allows a similarly situated carrier to enter into essentially the same agreement, the proposed Agreement should not be considered economically discriminatory.

Regarding the public interest criterion, Staff recommended that the Commission examine the Agreement on the basis of economic efficiency, equity, past Commission orders, and state and federal law to determine if the Agreement is consistent with the public interest. Staff noted that in previous dockets, Staff took the position that negotiated agreements should be considered economically efficient if the services are priced at or above their Long Run Service Incremental Costs ("LRSICS"). Staff believes requiring a service to be priced at or above its LRSIC ensures that the service is not being subsidized and complies with the Commission's pricing policy. Staff states that all of the services in the proposed Agreement are priced at or above their respective LRSICs. Therefore, Staff submits that this Agreement should not be considered economically inefficient.

In Staff's opinion, the Commission should approve the Agreement subject to Staff's recommendations regarding implementation as discussed below.

With respect to the implementation of the Agreement, Staff recommends that the Commission require Verizon, within five (5) days from the date the Agreement is approved, to modify its tariffs to reference the negotiated agreement for each service. Staff says this requirement is consistent with the Commission's Orders in previous negotiated agreement dockets and allows interested parties access to the Agreement. Staff recommends that such references be contained in Verizon's Access tariff, identified as ICC No. 10, Section 18, and in any future tariff that offers any of the services contained in the agreement.

Staff also recommends that the Commission require Verizon to file, with the Office of the Chief Clerk of the Commission ("Chief Clerk"), a copy of the approved Agreement between Verizon and CCTC, without the letter of position of May 22, 2002 from Verizon to CCTC ("the letter of position"), within five (5) days from the date the Agreement is approved. Staff further recommended that the Commission direct the Chief Clerk to place the Agreement, without the letter of position, on the Commission's web site under "Interconnection Agreements." The Commission concludes that Staff's recommendations regarding implementation of the Agreement are reasonable and should be adopted.

Findings and Ordering Paragraphs

The Commission, having considered the entire record herein, is of the opinion and finds that:

- (1) the Commission has jurisdiction of the parties hereto and the subject matter hereof;
- (2) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;
- (3) the Agreement does not discriminate against a telecommunications carrier not a party to the Agreement and is not contrary to the public interest, convenience and necessity;
- (4) in order to assure that the implementation of the Agreement is in the public interest, Verizon shall implement the Agreement by filing it, without the letter of position, with the Chief Clerk under separate cover within five (5) days of approval by the Commission; with that filing, Verizon shall file a verified statement with the Chief Clerk that the Agreement being filed, without the letter of position, is the same as the Agreement filed in this docket with the verified joint petition; the Chief Clerk shall place the Agreement, without the letter of position, on the Commission's web site under "Interconnection Agreements";
- (5) within five days of the entry of this Order, Verizon shall modify its tariffs to reference the Agreement in the manner recommended by Staff and described in the prefatory portion of this Order;
- (6) the Agreement should be approved as hereinafter set forth;
- (7) approval of this Agreement does not have any precedential affect on any future negotiated agreements or Commission Orders.

IT IS THEREFORE ORDERED by the Commission that the Agreement between Verizon and CCTC is approved pursuant to Section 252(e) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that Verizon shall comply with Findings (4) and (5) above within five (5) days of the date of this Order.

IT IS FURTHER ORDERED that this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 25th day of September, 2002.

(SIGNED) KEVIN K. WRIGHT

Chairman